



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

November 21, 2019

SPR19/2321

Sean W. Farrell, Esq.
Department of State Police
470 Worcester Road
Framingham, MA 01702

Dear Attorney Farrell:

I have received your petition on behalf of the Massachusetts Department of State Police (Department) requesting permission to charge for time spent segregating or redacting responsive records under G. L. 66, § 10(d)(iv). As required by law, the Department furnished a copy of this petition to the requestor. G. L. c. 66, § 10(d)(iv). On November 1, 2019, Lucy Labs of *MuckRock* requested several categories of records involving search warrants from 2012 to present including:

- Full Name of requester
- If arrest, arrest ID (eg some cities/states use, "Incident Report")
- Reason(s) for search warrant (typically either hand-written, or checkboxes)
- Badge ID (or similar) of requester
- District/Unit
- Name of Judge
- Name of approving officer
- Whether an Arrest happened
- Requested location of search warrant
- Location of search warrant execution
- Type of search warrant
- Statements used to justify search warrant
- Time and date when search warrant was submitted for approval
- Time and date when search warrant was executed
- Whether anything was seized
- Whether anything was found
- License plate of vehicle (if relevant)
- Race of person for search warrant
- Age of person for search warrant

- State of person for search warrant
- Whether an informant was involved
- Method of contact with informant leading to search warrant (eg, phone call, mail, fax, email, etc)
- Description of person search warrant executed on
- Legal code of violation
- Description of violation
- Date of violation
- If search warrant related to debt: name of company debt is owed to, amount owed
- Whether FBI involved
- ID associated with FBI document (eg, IR #)
- Whether search warrant was cancelled
- Whether contraband found
- Whether narcotics found.

Petition to Assess Fees

A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records (Supervisor) under a petition under G. L. c. 66, § 10 (d)(iv). See G. L. c. 66, § 10(d)(iii); 950 C.M.R. 32.06(4).

In rendering such a decision, the Supervisor is required to consider the following: a) the public interest served by limiting the cost of public access to the records; b) the financial ability of the requestor to pay the additional or increased fees; and c) any other relevant extenuating circumstances. G. L. c. 66, § 10(d)(iv).

The statute sets out a two-prong test for determining whether the Supervisor may approve an agency's petition to allow the agency to charge for time spent segregating or redacting records. The first prong is whether the request for records was made for a commercial purpose. G. L. c. 66, § 10(d)(iv). It is my determination that this request was not made for a commercial purpose.

The second prong of the test is whether the fee represents an actual and good faith representation by the agency to comply with the request. The Supervisor must consider 1) if the fee is necessary such that the request could not have been prudently completed without the redaction or segregation; 2) the amount of the fee is reasonable; and 3) the fee is not designed to limit, deter or prevent access to requested public records. Id.

Petitions seeking a waiver of statutory limits to fees assessed to segregate and/or redact public records must be made within ten business days after receipt of a request for public records. 950 C.M.R. 32.06(4)(g).

Fee Estimates

An agency may assess a reasonable fee for the production of a public record except those records that are freely available for public inspection. G. L. c. 66, § 10(d). The fees must reflect the actual cost of complying with a particular request. Id. A maximum fee of five cents (\$.05) per page may be assessed for a black and white single or double-sided photocopy of a public record. G. L. c. 66, § 10(d)(i).

Agencies may not assess a fee for the first four hours of employee time to search for, compile, segregate, redact or reproduce the record or records requested. G. L. c. 66, § 10(d)(ii). Where appropriate, agencies may include as part of the fee an hourly rate equal to or less than the hourly rate attributed to the lowest paid employee who has the necessary skill required to search for, compile, segregate, redact or reproduce a record requested, but the fee shall not be more than \$25 per hour. Id. A fee shall not be assessed for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the Supervisor of Records under a petition under G. L. c. 66, § 10(d)(iv). See G. L. c. 66, § 10(d)(ii); 950 C.M.R. 32.06(4).

Current Petition

In its petition dated November 15, 2019, the Department requests approval to assess fees for costs associated with responding to a public records request. The Department states that “[a]t the onset, the Department’s main records system (RAMS) and (ACISS) do not maintain a search warrant database concisely listing the (31) sub-categories of information requested for every executed search warrant from 2012-present.” The Department further states that this “voluminous amount of information” will need to be reviewed for “highly sensitive law enforcement information.” The Department asserts that “the files would contain witness/complainant identity information, criminal offender record information (‘CORI’), private and personal information, dates of birth/social security numbers, investigative techniques, and/or whether a case is impounded or an open prosecution.”

The Department explains with respect to redactions under Exemptions (a), (c) and (f), that the records may contain information that is “not subject to public disclosure. Accordingly, the information must be segregated and redacted.” Additionally, the Department asserts that “specifically exempt...[are] criminal offender record information (‘CORI’), investigative techniques and or whether a case is impounded or an open prosecution.” The Department also asserts these records also contain Personal Identifiable Information that would require redacting pursuant to G. L. c. 4, §7, cl. 26 (c).

The Department articulates that the “main records system (RAMS) and (ACISS) do not maintain a search warrant database concisely listing the (31) sub-categories of information requested for every executed search warrant from 2012-present..” The Department offers the flowing breakdown: “it would expend approximately (6) minutes per file/entry to review each RAMS and ACISS files. Accordingly, the Department estimates “in good faith that it would, in

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total, expend approximately (6) minutes per file in order to properly research, review and redact records responsive to this request, if any, from each of the 160,000 plus entries/files.”

Conclusion

In light of the Department's petition, I find the Department has met its burden to explain how the response could not be prudently completed without the redaction or segregation. To the extent the responsive records contain the exempt information as described above, the Department may assess a fee for segregation and redaction. This office encourages Ms. Labs and the Department to continue to communicate to facilitate providing records more efficiently and affordably. See G. L. c. 66, § 10(b)(vii). Any fee estimate by the Department must be in compliance with this determination, the Public Records Law, and its Access Regulations.

Please note, Ms. Labs has the right to seek judicial review of this decision by commencing a civil action in the appropriate superior court. See G. L. c. 66, § 10(d)(iv)(4), 10A(c).

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Lucy Labs